



## New Federal Protections for Pregnant and Nursing Employees to Take Effect in 2023

On December 29, 2022, President Biden signed into law two laws protecting pregnant and nursing mothers. The two laws were included as part of the bipartisan funding package passed by Congress in late December. The two laws are the Pregnant Workers Fairness Act (the PWFA), and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act. Together, the PWFA and the PUMP Act are rare bipartisan laws aimed at enhancing protections for pregnant and nursing mothers in the workplace.

The PWFA provides that covered employers (those with more than 15 employees) must provide reasonable accommodations to allow pregnant workers to perform the essential functions of their positions. In effect, the law codifies and expands upon the Supreme Court's 2015 ruling in *Young v. UPS*, which is discussed [here](#). Under *Young*, employers were obligated to provide reasonable accommodations to pregnant workers to the extent they provided similar accommodations to non-pregnant employees who were similar in their ability to work. The PWFA expands upon this ruling by specifically stating that it is an unlawful employment practice for an employer to fail to provide a reasonable accommodation to a pregnant worker. It incorporates the definition of "reasonable accommodations" under the Americans with Disabilities Act (ADA), which means employers must work with employees and engage in an interactive process with pregnant workers who request an accommodation. Additionally, the law protects workers seeking a pregnancy accommodation from retaliation and prohibits employers from terminating an employee who seeks an accommodation for a pregnancy-related reason. A number of states have previously enacted laws that provide for pregnancy accommodations. The PWFA will be effective as of six months after its passage, or on June 29, 2023.

The PUMP Act amends the Fair Labor Standards Act and expands protections for nursing mothers in the workplace. It requires employers with 50 or more employees to provide reasonable break time for all employees, including salaried employees, to express breast milk as needed. The bill further clarifies that such breaks need not be paid, unless the employee is still on the clock or “not completely relieved from duty” during those breaks. Employers must also provide a clean and private space for nursing mothers to express milk separate and apart from restrooms. Protections for nursing mothers under federal law previously did not extend to employees exempt from overtime under the Fair Labor Standard Act. The PUMP Act protections took effect immediately.

### **Key Employer Takeaways**

- Employers should review and update their policies and practices to ensure they are prepared to provide reasonable accommodations to pregnant employees and applicants, including employees and applicants with pregnancy-related medical conditions.
- Employers with 50 or more employees should review their policies and practices regarding break time and space for breastfeeding employees to express milk to ensure they are in compliance with the new PUMP Act.

This blog post was drafted by [Helen Holden](#), a partner in the Spencer Fane Phoenix office. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).